

Oversight of the Office of Taxpayer Advocate:  
**Principal Findings and Actions**



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## Introduction

Soon after taking office, the **Internal Revenue Service Oversight Board** (IRSOB or Board) began to study and review the **Office of Taxpayer Advocate** (OTA) and the **National Taxpayer Advocate** (NTA). The OTA is a functional, somewhat independent unit of the **Internal Revenue Service** (IRS) and is headed by the NTA. Many persons within and outside the agency cooperated and assisted in the Board's review, including the **Treasury Inspector General for Tax Administration** (TIGTA). The Board acted independently, but the **Commissioner of Internal Revenue** (Commissioner) and the NTA fully cooperated with the Board's review and endorsed the Board's findings and recommendations.

At a meeting on June 4, 2002, the Board thoroughly discussed the findings of its extensive review and deliberated several recommendations for action. In the end, the Board unanimously decided, generally and most importantly, that with respect to the OTA, the Internal Revenue Service (IRS) must provide:

- **Faster service.** The OTA and Operating Divisions (ODs)<sup>1</sup> must act much more quickly in resolving problems of individual taxpayers.
- **Direct accountability.** In evaluating the performance of the NTA, the operating units, and their leaders, both the agency and the Board should consider, as a material factor, the progress or lack of progress in resolving individual taxpayers' problems more quickly.
- **Systemic advocacy.** The occurrence of individual taxpayers' problems should decline if the NTA emphasizes and energizes systemic advocacy and if the Operating Divisions and Congress are responsive to these efforts; and to this end the Board will closely monitor and review the process and results of a current visioning and strategy project within the OTA, specifically addressing the ways and means of achieving balance between an independent OTA systemic advocacy function and the operating divisions' own internal systemic advocacy efforts.
- **Effective training.** A significant challenge in bettering systemic advocacy is avoiding the problems of cross-unit coordination that are common throughout the agency. Effective training/learning is a potent antidote for these and many other problems. The IRS must therefore develop and implement ambitious, innovative, measurable programs for complete, truly effective training and learning throughout the agency and especially for the OTA and Operating Divisions that focus on their relationships in solving individual taxpayers' problems and increasing systemic advocacy.

This report summarizes the extensive processes and materials behind the Board's actions and explains the essential reasoning for the Board's actions.



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## Relationship Among the Restructuring and Reform Act of 1998, the Internal Revenue Service Oversight Board, and the National Taxpayer Advocate

In the **Internal Revenue Service Restructuring and Reform Act of 1998** (RRA98),<sup>2</sup> Congress powerfully refocused the Internal Revenue Service (IRS), telling the agency directly and very simply to revise and restate the agency's mission to put greater emphasis on serving the public and meeting taxpayers' needs.<sup>3</sup> To ensure the IRS carries out this mission, the Congress created the IRS Oversight Board<sup>4</sup> with very broad responsibilities to oversee the organization and operation of the agency. Specific oversight responsibilities of the Board include ensuring the proper treatment of taxpayers by IRS employees.

At the same time, and as a further safeguard, Congress established the separate OTA<sup>5</sup> under the direction and supervision of the NTA.<sup>6</sup> The main job of the NTA is to prevent and resolve taxpayers' problems in dealing with the IRS.

The Board and OTA are not formally, directly connected except that the **Secretary of Treasury** (Secretary), who appoints the NTA, must consult the Board in making the appointment.<sup>7</sup> The Board's interest in the OTA is nevertheless very large because the NTA's main job is so clearly focused on and closely related to the congressionally mandated, core mission of the IRS, which the Board is required to oversee and ensure. The Board's large interest is further justified by the earliest legislative history and intent behind RRA98 describing a "special relationship" between the Board and the Taxpayer Advocate.<sup>8</sup>

### How the OTA Solves Taxpayers' Problems — Taxpayer Advocate Service

The very names of the Office of Taxpayer Advocate and the National Taxpayer Advocate imply that **advocacy** is their principal means to ensure proper treatment of taxpayers. The OTA has two principal, closely related advocacy functions: **systemic** and **casework**. In serving these functions the employees of the OTA operate as the **Taxpayer Advocate Service** (TAS).<sup>9</sup>

Systemic advocacy involves identifying common, shared problems of taxpayers in dealings with the IRS and solving these problems on a wholesale basis by proposing administrative and legislative changes that will prospectively affect all taxpayers similarly situated.

Casework advocacy is retail problem-solving: immediately helping individual taxpayers who face "significant hardship" caused by the manner in which the IRS administers the tax laws. Casework is a principal means of identifying problems for systemic solutions.

In statutory terms a significant hardship includes:

- an immediate threat of adverse action;
- a delay of more than 30 days in resolving taxpayer account problems;
- incurring significant costs of relief if not granted; or
- irreparable injury or a long-term adverse impact.<sup>10</sup>

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Delegated authority and regulations further define significant hardship, require fact-finding before granting relief,<sup>11</sup> and also describe and limit the kind of help TAS can provide.

In practice, field employees commonly describe casework as two principal types: procedural problems and economic hardship. Procedural problems involve taxpayers asking for help because an OD has failed to comply with established process. An economic hardship is a case in which the taxpayer seeks relief from the consequences of process duly applied.

However, for either type of casework, TAS jurisdiction requires the statutorily defined “significant hardship.”<sup>12</sup> In other words, TAS cannot properly handle any type of case absent such a hardship. Therefore, the NTA is encouraging TAS to use the term “**systemic hardship**” to describe and instead of procedural problems and the term “**economic hardship**” to describe and instead of true hardship. This report adopts the NTA’s terminology.

TAS was officially established and became operational in March 2000. The original staffing was a total of 2,342 employees<sup>13</sup> with 1,499 persons assigned to case advocacy.<sup>14</sup> Since then, TAS total and case advocacy staffing has decreased,<sup>15</sup> and to a lesser extent TAS workload has also decreased. Still, the number of cases TAS handles is large. Actual workload for fiscal year 2000 was 256,000 cases<sup>16</sup> and 238,000 cases in fiscal year 2002.<sup>17</sup> Despite this heavy workload and smaller staffing, customer satisfaction ratings are remarkably, relatively good.

### Processes Leading to This Report

Two related processes, which span more than a year, are behind this report, inform the issues and findings of the report, and support the actions taken by the Board.

#### *A. Board Involvement in 2001 Appointment of NTA — Issues for Continuing Oversight*

The first NTA, Val Overson, resigned in October 2000. Soon thereafter, the Commissioner wrote the Board recommending a person to fill the position, Ms. Nina Olson. The Board responded, in effect, by creating a procedure for the Board to review and consult with the Secretary on the appointment.

As a first step in this procedure, the Board thoroughly reviewed and investigated the structure of the OTA and sought to understand any principal problems or challenges facing the NTA. The Board identified several challenges and considered Ms. Olson’s suitability for the position.

In the end, and on the basis of an extensive formal report, the Board voted to advise the Secretary that the Board would concur in the appointment of Ms. Olson as NTA. On the basis of the Commissioner’s recommendation, consultation with the Board, and his own investigation, the Secretary appointed Ms. Olson in January 2001. She took office as NTA in March 2001.

Beyond deliberating and consulting with the Secretary on the appointment of Ms. Olson, the Board also voted to continue to investigate and monitor regarding certain problems and challenges the new NTA would face; specifically:

- Any functional or operational difficulties caused by the existing organizational placement and structure of the position and Office of National Taxpayer Advocate, especially possible strains of reporting and answering to the Commissioner while maintaining independence in advising Congress;
- The role of the National Taxpayer Advocate regarding tax policy, especially the differences on this issue between the NTA and Chief Counsel and between the NTA and the Department of Treasury and the effects of these differences on the role and functioning of the Office of National Taxpayer Advocate;
- The completeness of statutory and delegated authorities for the OTA to operate effectively and appropriately in full compliance with congressional intent;
- The authority and practice regarding the proper use of Taxpayer Assistance Orders and Taxpayer Assistance Directives to accomplish the functions and objectives of the Office as intended by Congress;
- Any real or apparent jurisdictional or operational conflicts between the Office of National Taxpayer Advocate and the Appeals Division that could affect the functioning and effectiveness of either group or affect service to taxpayers; and
- The range of classes of taxpayers whom the Office serves, especially including the provision of services to small business, to insure that service is provided effectively to all classes intended by Congress.

***B. Continuing Board Oversight in 2002***

In January 2002, as Ms. Olson's first-year anniversary as NTA approached, the Board voted to revisit and review the six challenges facing the NTA that the Board had identified in consulting with the Secretary on Ms. Olson's appointment. A procedure for continuing this oversight, and identifying any new problems, was developed and adopted by the Board.

Over several months and on several occasions, the Board met with the NTA and also TAS employees in the field. The Board also wrote to all TAS employees asking for their help in the oversight process. Many employees across the country responded. Their consolidated responses totaled more than 70 single-space pages. Some respondents were contacted to explore in greater detail the issues they raised in their responses.

Additionally, the Board solicited opinions and comments from external stakeholders. The responses were all very thoughtful and helpful.

## Principal Findings and Actions

Pound for pound, TAS may be the most directly important and immediately effective means available to the IRS not only for solving taxpayers' problems but also for preventing problems and thereby improving service to taxpayers. The OTA, NTA, and TAS have aggressively tackled all of the challenges and problems that the Board identified in 2001. Most of these problems have been solved or processes have been put in place to resolve them satisfactorily.

Two problems remain less resolved. The Board continues to watch these areas very closely and has intervened on certain subordinate issues to hasten solutions.

### *A. Service to small business*

The OTA serves all taxpayers, including businesses of all sizes. Among TAS workload are even a few cases involving very large businesses. Large businesses, however, typically can and do employ their own, private resources to solve problems with the IRS. Small businesses typically lack these resources; yet they face huge complexity in the tax laws that is greater than the complexity for individuals and in many cases as confusing as anything faced by the largest, richest corporations. Thus, tax policy and tax administration squeeze small businesses especially hard.

In the process of reviewing the appointment of the current NTA, Ms. Nina Olson, and in interviews with her, the Board focused on the service she thought small businesses deserved and she expected to give them. Her past professional experience included both individual taxpayers and also small- and medium-sized business. She was therefore very aware of and sensitive to their problems in dealing with tax law and the IRS. She unhesitatingly agreed that small business is entitled to full, rich service from the NTA, and she is committed to providing it.

Recently, the NTA established an Office of Business Advocacy to focus on specific advocacy issues relating to small business and self-employed taxpayers. Because “[s]mall business problems can be related to IRS processes, communications, policies, training, or the underlying tax law ... [t]he National Taxpayer Advocate will continue to comment on proposed and final regulations impacting small business taxpayers. The Office of Business Advocacy will work with the Small Business Administration and other outside stakeholders to identify small business concerns with the IRS, partner in various operational taskforces that address process improvements, and make recommendations on changes to taxpayer correspondence.”<sup>18</sup>

The empirical and other evidence suggest, however, that at this time small business is underrepresented in the inventory and resources of TAS. TAS itself has identified small business as an “underserved” segment and continues to study solutions in addition to steps already taken.

The Board believes that the newly established Office of Business Advocacy and other efforts of the NTA aimed at small businesses will effect a better balance. The Board intends to oversee these efforts to determine if success is achieved as quickly as possible; and the Board is committed to intervening appropriately and strongly to hasten success.

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## *B. Adequacy of delegated authorities to resolve directly taxpayers' problems*

### *1. The Immediate Practical Issue*

TAS casework (well over 200,000 cases each year) involves two types of hardships: economic and systemic. Only about 14 percent of casework involves economic hardships, and these cases are ordinarily resolved directly by TAS employees. A typical case involves the agency's legitimate delay of a refund that the taxpayer desperately needs to pay necessary expenses.

The overwhelming majority of casework, about 86 percent, involves systemic hardships.<sup>19</sup> These problems subdivide into two groups: problems that TAS employees can themselves correct<sup>20</sup> and problems that are beyond the authority of TAS to resolve and must be returned to ODs to resolve with the encouragement and monitoring of TAS employees.<sup>21</sup> TAS generally believes that the ODs are required to give priority to these returns, but in practice there is none.

Among the largest issues in the whole of OTA is whether or not TAS has sufficient authority to resolve systemic problems.<sup>22</sup> In other words, should TAS employees have wider authority to resolve systemic problems themselves so that more of these cases are resolved directly by TAS and fewer such are returned to ODs for resolution? The size of the authority is presently set by the Commissioner's delegation of authority to the NTA,<sup>23</sup> and the NTA's further delegation of her authority through orders to TAS.<sup>24</sup>

### *2. The Problem In Context*

Here is how a typical systemic hardship case arises and has been handled when its resolution is beyond the authority of TAS itself to resolve:<sup>25</sup>

- Taxpayer's return is audited by correspondence (not a field or office audit).
- OD notifies taxpayer that something is necessary.
- Taxpayer responds but hears nothing from OD.
- Taxpayer calls to inquire and complain and probably talks to an OD call-site assistor.<sup>26</sup>
- Call-site assistor determines the case is appropriate for TAS, prepares a paper Form 911,<sup>27</sup> and routes the Form 911 to TAS.<sup>28</sup>
- TAS reviews the Form 911 and enters the case into TAS database, and the case is assigned to a TAS caseworker.
- TAS caseworker determines that assistance is justified and issues an Operational Assistance Request (OAR) that refers the case for resolution to the appropriate place in the OD.<sup>29</sup>
- The minimum amount of time from the taxpayer calling to inquire and the agency resolving the problem is 120 days, and six to nine months is not uncommon.<sup>30</sup>
- Most of this time is spent waiting on the OD to resolve the problem. During this period the TAS caseworker will call the OD or taxpayer at least every 30 days to check on the progress toward resolution.

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Even in a case in which the OD acts more quickly, there are other, usual delays that could have been avoided if the problem were resolved directly by TAS. Here are the essential facts of an actual, typical case:

- 11/14/01: Case received in local TAS office via a referral from a toll-free site. Taxpayer [TP] disagreed with an assessment that was made on 5/14/01. The assessment was the result of the income-matching program (Underreporter Program in the campuses).
- 11/15/01: Taxpayer was requested to mail information to TAS to support the fact that the income in question was non-taxable. (This was the reason TP disagreed with the additional assessment.) [The Senior Associate Advocate] SAA ordered the original assessment document from the campus.
- 12/05/01: SAA received the assessment document and recontacted taxpayer regarding non-receipt of supporting information.
- 12/19/01: SAA received the supporting information from the taxpayer. SAA reviewed the information and determined additional information was needed and requested this from the taxpayer.
- 02/13/02: SAA received the additional information from the taxpayer. SAA prepared OAR to campus, recommending that assessment be abated based on the documentation provided by the taxpayer that indicated the income was non-taxable.
- 02/27/02: OAR was returned to local TAS office from the campus because the original documents were misrouted.
- 02/28/02: SAA in local TAS office re-sent the OAR and faxed all documents directly to employee in the campus.
- 3/18/02: The TAS office in the campus sent the OAR to the Underreporter unit for consideration of abatement of assessment, per local TAS office recommendation.
- 3/29/02: TAS office in the campus referred the case back to the local TAS office after receiving information from the Underreporter unit that the abatement had been entered by the Operations employee.
- 04/15/02: SAA verified that adjustment had posted (normally takes two weeks for an adjustment to post to Master File).
- 04/18/02: SAA notified taxpayer of adjustment and advised of refund date and amount and closed the case.
- [The Local Taxpayer Advocate commented:] “I must say this was a relatively quick resolution. The response time in the campus (from 3/18 to 3/29) was somewhat out of the ordinary. We generally expect the Operating Division in the campus to average around a month before our OAR is acted upon. The most important issue to bring out is that if we had the authority, my SAA could have input the adjustment on 02/13/02, when she received the supporting documentation from the taxpayer, verifying that the income was non-taxable. Since the adjustment resulted in a refund to the taxpayer, he/she would have received their refund approximately two months earlier than they did with the current procedures in effect.”

Dissatisfaction and frustration with the usually slow process for resolving systemic problems is the largest concern among employees in the field. Here is a fairly representative response when the Board asked field employees to give the Board their opinions about TAS:

*I work in the Taxpayer Advocate Service (TAS)... office in [the field] .... As Senior Associate Advocates (SAAs) and Associate Advocates (AAs), we are expected to "advocate" with the operating functions regarding the processing of our cases. The idea behind this concept was to make the Operating Divisions aware of the problems they cause by either not taking timely actions, or by taking incorrect actions, on their work. This sounds wonderful in theory; however, the application of this procedure is presently not working. \* \* \* When examination cases finally get assigned to a group, the responses we receive from their management is that they have no employees to assign our work to. Their auditors/agents are all assigned to other special projects, such as CI or Grand Jury, and there is no one to work TAS cases. TAS is not a priority over these other programs. It is not the fault of the taxpayer that our local office staffing is so low — they only want their cases worked. The taxpayer does not care who caused the problem — they want it fixed, and they want it done within a reasonable time span.*

*Another problem is the [requests for assistance] that we have to send to the service center for assistance. We forward the case through our automated computer system, TAMIS, and the case is assigned to an employee in the Taxpayer Advocate Office in the service center. Their job is to forward the case to the appropriate Operations Unit in the service center. When the cases are finally received and forwarded to the Operations Unit, no one in the Operating Unit calls to acknowledge receipt and assignment of the case. It would be of great help to us, the caseworkers, if the Operations Units would acknowledge receipt, and furnish the name/employee number/phone number for the person handling our taxpayer's issue. It appears that even though our case has priority in TAS, once it leaves the TAS office to go to an Operations Unit, the case loses its priority, and falls in with the regular work, to be worked whenever it gets to the top of the stack.*

*I had the understanding that we, as IRS employees, should all be working towards the same goal, which is to resolve taxpayer problems. It will continue to be impossible to resolve anything if IRS does not work together as one cohesive agency. Each area works separate and apart, and there is no cooperation between the units. Phone calls to Operating Units, or the Liaisons in the Memphis Service Center, rarely, if ever, get returned. If there is an open base on a case in our inventory, we are unable to do anything with the account because it is already assigned to someone. Telephone contact is needed to determine if the employee with the open control base is handling the same issue. Again, we are back to the same problem of lack of responsiveness from telephone contacts.*

*I apologize \* \* \*. I am very disheartened \* \* \*. I previously worked in the Problem Resolution Program, and felt a sense of accomplishment. I felt that I had control over resolving taxpayer problems, and now, I feel that I am constantly running into brick walls. I know that management is able to make the final determinations on work processes; however, how long do our taxpayers have to suffer, and get even more frustrated, because of the agency's inability to correct their internal problems?*

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This kind and degree of frustration can lead TAS employees to act and take actions themselves, beyond their authority, to resolve taxpayers' systemic problems.<sup>31</sup> Such unauthorized actions are subjectively justified in the minds and hearts of employees because they truly want to help taxpayers; the solution is clear, right, and systemically procedural only; the problem was caused completely by agency inabilities; and the TAS employees are as well experienced and qualified as anyone else to see and solve the problem. Under the predecessor regime — **Problem Resolution Program** (PRP) — casework employees were authorized themselves by district heads to correct systemic and other problems.

TAS could legally, unilaterally resolve many or most cases involving systemic problems. The delegations of authority from the Commissioner to the NTA and from her to the field could be widened,<sup>32</sup> and a great many TAS employees in the field believe the authorities should be wider.<sup>33</sup> Also, RRA98 empowers the NTA, on her own and without delegation from the Commissioner, to issue Taxpayer Assistance Orders (TAOs) in hardship cases.

### 3. *The NTA's Approach*

The NTA has spoken for herself very clearly and candidly about the proper role for TAS in resolving directly taxpayers' problems.<sup>34</sup> In sum, she believes that too much authority to act directly to solve taxpayers' problems, at least in cases of systemic hardship, is inconsistent with the independence and impartiality of a true advocate and also undermines routine accounts management processes throughout the IRS. An especially critical point that she makes, and the Board accepts, is that even though the NTA works for the American public and serves taxpayers, the job of TAS is not automatically to side with individuals who complain against the IRS:

*Independent, critical thinking on behalf of taxpayers does not mean blind acquiescence to a taxpayer's or group of taxpayers' demands. Critical thinking does not require the advocate to be critical only of the IRS. A Taxpayer Advocate Service employee must be true to his or her foundation as an ombudsman. The advocate must provide an impartial assessment of the situation and determine the appropriate course of action, free from influence of both the IRS and the taxpayer. The Taxpayer Advocate owes a duty to the tax system, in addition to his or her duty to the IRS and the taxpayer. It is only through impartiality that the advocate is able to balance these three competing interests.*<sup>35</sup>

The Board has studied the reports and other materials that fully describe the NTA's approach and the philosophy behind it; and the Board has talked with her extensively about this matter. The bases for her approach are fully principled, and in her view the approach she urges is mandated by Congress and required for the good of the IRS and taxpayers. No one anywhere in the agency has given more thought to any issue; is more committed to effective service to taxpayers; or works harder and longer on their behalf. Her views and her approach to managing TAS are entitled to great deference.

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#### 4. *Actions By The Board*

The Board does not take a position on whether or not the present authority of TAS is sufficient. The issue closely approaches the level of strategic policy that is properly within the Board's review but at this time properly remains a matter of operational tactics beyond the Board's legitimate involvement.

However, the Board cannot ignore the consequence of all factors that cause systemic problems for many thousands of taxpayers and material delay in resolving these problems and obtaining relief in other cases returned to ODs for resolution. The Board therefore took various actions that are consistent with the NTA's approach to advocacy; are intended to bolster this approach; and are aimed mainly at insuring informed, accountable cooperation throughout the IRS:

- a. **Urged the Commissioner, OTA, and ODs to conclude national service-level agreements designed to promptly resolve cases returned or otherwise referred to ODs by TAS,<sup>36</sup> and requested the Commissioner to (i) make it possible for the Board's Committee on Personnel and Organization to observe easily and closely the implementation of the national agreement and addendums; and (ii) periodically report in writing to the Board about how the agreement and addendums are working and any changes made or proposed to make them work better.**
- b. **Recommended that the agency's own balanced measures for judging the performance of the OTA and ODs include reducing the occurrence of systemic problems that taxpayers encounter in dealing with ODs and progress of the OTA and ODs in promptly resolving such problems and providing prompt relief in other cases referred or returned by TAS to ODs for resolution.**
- c. **Agreed that when the Board and its committees measure the performance of the OTA, ODs, and senior executives, the measures shall include progress in reducing the occurrence of systemic problems that taxpayers encounter in dealing with ODs and progress of the OTA and ODs in promptly resolving such problems and providing prompt relief in other cases referred or returned by TAS to ODs for resolution.**

Ideally, the occurrence of procedural problems and the need for relief in systemic hardship cases will decline if the NTA continues to emphasize and energize systemic advocacy and the Operating Divisions and Congress are responsive to these efforts. At the same time, TAS is poised to implement outreach strategies that may increase the receipt of economic hardship cases. These cases may also increase as a result of renewed IRS compliance activities.

These trends raise organizational issues for the future including:

- Is the TAS funding, structure and staffing sufficient to address systemic problems while improving casework advocacy to taxpayers?
- What is the proper structure of the TAS and its funding and staffing needs?

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- What is the appropriate relationship between TAS' statutorily mandated advocacy function and the Operating Divisions' internal systemic advocacy functions?

The IRS is currently conducting a Taxpayer Advocate Service Tax Administration Vision and Strategy (TAVS) project addressing these questions.<sup>37</sup>

In light of these and related issues that fundamentally affect proper taxpayer treatment which RRA 98 separately requires the Board to ensure, the Board:

- d. Agreed that at the completion of the TAVS project, the Board will review the resulting findings, recommendations, and plans, specifically addressing the ways and means of achieving balance between an independent IRS systemic advocacy function and the Operating Divisions' own internal systemic advocacy functions.**

A significant challenge in bettering systemic advocacy is avoiding the problems of cross-unit coordination that tend naturally to result from separated, decentralized functions and operations. These problems are common throughout the agency because of the new organizational structure and are partly or largely to blame for delays in casework advocacy. Improving cross-unit coordination is a strategic goal for the whole agency, and arguing to avoid the natural problems of decentralization by centralizing activities avoids this goal and contradicts the main structure of the new organization.<sup>38</sup>

Effective training/learning is a potent antidote for problems of cross-unit coordination and also internal problems of each organizational unit. The Board has already recognized the importance of training/learning throughout the Agency and has approved a comprehensive plan for oversight of training/learning.<sup>39</sup>

Training/learning should receive agency-wide attention as a strategic matter that needs modernization along with and as an integrated part of organization and technology modernization. Indeed, it was observed at the June 2002 Board meeting, and the Commissioner agreed, that the ability of the Agency to absorb organizational and technological change is affected by effective, coordinated, and integrated training/learning.

The importance and difficulty of effective training/learning are perhaps somewhat higher in TAS because the employees often act as generalists handling a wide range of problems and also because the employees are routinely required to deal and act cooperatively across organizational lines. Not surprisingly, therefore, TAS employees commonly, repeatedly, seriously, and in detail complain about their own training and the lack of effective training for OD employees about how properly to understand the role of OTA and deal with TAS cases.

The NTA understands the need for better and wider training of her employees and also training of OD employees about the whole of OTA and especially dealing with TAS. In practice, however, her ideals for training and learning are far from realized. The Board shares these ideals and supports and encourages their fruition. To this end the Board:

- e. **Encouraged the Commissioner to develop and implement ambitious, innovative programs for completely, truly effective training and learning throughout the agency and especially, in line with this report, such programs for the OTA/TAS and the ODs in their relationships with OTA/TAS; encourage them to include appropriate means for accurately measuring the effectiveness of the training/ learning; and request the Commissioner to (i) make it possible for the Board's Committee on Personnel and Organization to observe easily and closely these efforts, and (ii) report in writing within a reasonable time on the development of such programs and the plans for and progress in implementing them.**

5. *Further Developments the Board Will Monitor*

- a. The National Taxpayer Advocate negotiated and entered into **National Service Level Agreements** with the Commissioner of each operating division and the National Chief, Appeals. These agreements are effective on September 1, 2002 and are a significant recognition on the part of the entire IRS that TAS cases are a corporate responsibility. They also acknowledge that those cases that fall out to TAS as a result of procedural delays deserve priority treatment by the rest of the IRS, and they provide an avenue not just for the resolution of taxpayer cases but also for the identification and resolution of systemic problems within the IRS.<sup>40</sup>
- b. The National Taxpayer Advocate will convene a team to **revisit the issue of its delegated authority**. This team will consist solely of TAS employees and will develop recommendations for the IRS Senior Leadership Team about the appropriate balance of TAS delegated authorities. The team will be specifically charged with considering the desirability of (1) rescinding the delegation of certain "substantive" authorities and (2) delegating additional "accounts management" authorities, including the ability to enter certain account adjustments after the appropriate IRS function has made the substantive decision in the case. These latter authorities will speed the closure of TAS cases without compromising TAS's independence or impartiality. The Authorities team will report back to the National Taxpayer Advocate in early fiscal year 2003. The NTA will then seek a consensus with the IRS senior leadership about changes in the Taxpayer Advocate Service's delegated authorities.
- c. The NTA believes that TAS employees must be able to protect taxpayer confidences from disclosure to the rest of the IRS in appropriate instances. Congress too recognized the important role of confidentiality by granting Local Taxpayer Advocates the discretion to withhold from the rest of the IRS the fact that the taxpayer called TAS or any information provided to TAS by the taxpayer.<sup>41</sup> Therefore, in fiscal year 2003, TAS will begin to implement the confidentiality authority. Under the NTA's direction, TAS is developing an analytical approach that will assist Local Taxpayer Advocates and their employees in deciding what taxpayer-provided information should be disclosed to the IRS. TAS will conduct an intensive case-study training program for all of its employees based on this analytical model. The training will occur within the employees' work groups, in their posts of duty, so that it is incorporated into their day-to-day activities and taxpayer contact.<sup>42</sup>

## Conclusion

The OTA and the TAS organization are critically important to the success of the IRS mission: to serve the public and meet taxpayers' needs. No other unit or function is more important. The NTA is providing effective leadership and management to define the best, most effective role for TAS within and throughout the IRS. The largest challenge she faces is educating the agency and the public about this role and appropriately integrating TAS activities within and throughout agency operations. The Board's actions that are explained in this report are intended to support and further these processes of education and integration. The Board is fully committed to standing closely behind the NTA and TAS to oversee that progress in serving taxpayers continues and intensifies and to help remove barriers anywhere in the agency that impede this progress.

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## Endnotes

<sup>1</sup> For purposes of this report, “Operating Division” (OD) includes Appeals.

<sup>2</sup> Pub. L. No. 105-206, 112 Stat. 685.

<sup>3</sup> Id. §1002.

<sup>4</sup> Id. §1101. The Board is administratively located in the Department of Treasury and is responsible for the IRS, but the Board is not organizationally accountable to Treasury or the IRS. The Board naturally and rightly works very closely with them but answers directly only to Congress and the President.

<sup>5</sup> Id. §1102(c).

<sup>6</sup> Id. §1102(c)(1)(B). The OTA is a major, functional unit of the IRS, and the NTA organizationally reports to the Commissioner of Internal Revenue (Commissioner); but the NTA is also independently accountable to the Congress and taxpayers.

<sup>7</sup> “The National Taxpayer Advocate shall be appointed by the Secretary of the Treasury after consultation with the Commissioner of Internal Revenue and the Oversight Board \* \* \*. Id. §1102(c)(1)(B)(ii).

<sup>8</sup> The genesis of RRA98 was the Report of the National Commission on Restructuring the Internal Revenue Service (June 25, 1997) (Commission Report: A Vision for a New IRS). This report argued that taxpayer advocates are a significant part of improving taxpayer service. The Commission stressed, however, that success of the National Taxpayer Advocate required viewing the office as an independent voice for the taxpayer within the Internal Revenue Service.

Toward this end the Commission opined, “[t]he Taxpayer Advocate, as the voice of the taxpayer, will have a special relationship with the Board of Directors,” which explains why the Commission also recommended “[t]he Board should be involved in the selection of the Advocate . . . .” Throughout the subsequent legislative history of RRA98, the precise function of the Oversight Board changed regarding the appointment of the National Taxpayer Advocate, but a constant theme is that the Oversight Board plays an important role in the appointment process and otherwise to ensure the independence of the National Taxpayer Advocate.

<sup>9</sup> This title was coined as part of the administrative, organizational design of OTA. See IRS Organization Blueprint, document 11052 (rev.4-2000), catalog no. 27877P.

<sup>10</sup> 26 C.F.R. §301.7811(a)(2).

<sup>11</sup> “A finding of ‘significant hardship’ is separate and distinct from a determination that the taxpayer will be granted relief. The granting of relief requires an examination of the behavior of the taxpayer and of the action or inaction of the Internal Revenue Service that causes or is about to cause the significant hardship to the taxpayer.” 26 C.F.R. §301.7811-1(a)(5).

<sup>12</sup> See text accompanying note 11 *supra*. In the case of procedural problems, the usual basis for significant hardship is a delay in resolving taxpayers’ account problems.

<sup>13</sup> Total TAS staffing includes case advocates, systemic advocates, analysts, support staff, and managers. These numbers are based on the TAS Authorized Staffing Pattern (ASP).

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<sup>14</sup> Case Advocate Staffing includes case advocates in TAS field, campus, and National Office locations. These numbers are based on the TAS Authorized Staffing Pattern (ASP).

<sup>15</sup> In FY 2002 total TAS staffing was 2,305 employees, including 1,432 employees devoted to case advocacy.

<sup>16</sup> National Taxpayer Advocate's FY 2000 Annual Report to Congress, Publication 2104 (Rev. 12-2001) at 133.

<sup>17</sup> Taxpayer Advocate Management Information System (TAMIS). This number is projected through the end of FY 2002 based on the actual number of resolved cases through March 31, 2002.

<sup>18</sup> The National Taxpayer Advocate's Report to Congress, Fiscal Year 2003 Objectives, Publication 4054 (Rev. 6-2002) at 10.

<sup>19</sup> This figure is based on analysis of gross inventory for the year 2000. More recent data show somewhat different percentages depending on the source of the inventory, which mainly comes from W&I and SB/SE. Of the cases that TAS gets from W&I, 90 percent are operational delays. Of the cases that TAS gets from SB/SE, 92 percent are operational delays. The source of these numbers is a statistical data set prepared by OTA covering TAS closed cases for the period Oct. 1, 2001 through Dec. 31, 2001.

<sup>20</sup> Typical are cases in which TAS removes a penalty, transfers a payment that was misapplied, or corrects a math error.

<sup>21</sup> The former group is relatively larger than the latter group, but the number of cases in the latter group is absolutely large.

<sup>22</sup> Other close observers agree about the importance of this issue. For example, a major external stakeholder recently reported to his professional association that "[i]dentifying the role of the Taxpayer Advocate Service (TAS) has proven to be [and remains] a difficult and elusive task." "Mid Course Correction: The IRS in Transition," by William A. Stevenson, Enrolled Agent, Chair, Federal Taxation Committee, National Society of Accountants (June 4, 2002).

<sup>23</sup> Memorandum for National Taxpayer Advocate et al. from Charles O. Rossotti, "Delegation of Authority to the National Taxpayer Advocate and Guidelines for Issuing Taxpayer Assistance Orders," Jan. 17, 2001.

<sup>24</sup> For example, Nina E. Olson, TAS Delegation Order No. 267 (issued Sept. 25, 2001, effective Oct. 1, 2001).

<sup>25</sup> This hypothetical case was developed in interviews with TAS employees around the nation and confirmed by them as generally, grossly representative.

<sup>26</sup> This assistor is often located in a different regional area. For example, a taxpayer in Florida sends her return to Atlanta. When she calls the 800 number, she may talk to an assistor in Seattle.

It is alternatively possible that at this point a taxpayer will directly contact the LTA for her state. There is a published local number. Or, the taxpayer may directly call the national toll-free number for the NTA.

<sup>27</sup> Department of the Treasury, Internal Revenue Service, Form 911 (Rev. 3-2000), Application for Taxpayer Assistance Order.

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<sup>28</sup> Regrettably, it is not presently possible for the assistor to simultaneously prepare a digital Form 911 that, when entered, is automatically, electronically transmitted to TAS. Also, the assistor in Seattle may route the case to a TAS officer in Anchorage.

<sup>29</sup> In the case of the Florida taxpayer, the Anchorage TAS employee would issue the OAR to the Atlanta center. When the TAS employee calls the Florida taxpayer to explain what's happening, the taxpayer can't understand why someone in Alaska is working her problem with the Atlanta folk. Also, there are two problems if the taxpayer needs to call the TAS employee in Alaska: the time difference and the lack of a toll-free number to reach the Alaska TAS office. An even more fundamental problem for low-income taxpayers is that many of them have no long-distance service and cannot easily call a toll-free number even when such a number exists.

<sup>30</sup> Sixty days is a common time for resolving a procedural problem that TAS itself is authorized to resolve. These generalized estimates of time are based on many interviews with TAS employees around the country. The compiled statistical data show that the cycle time for the top ten major issue codes range from 99 to 252 days. The average cycle time for all other cases is 73 days. The average age for all TAS closures is 81.3 days. See TAS, Business Performance Review (Feb. 27, 2002) at 57.

There are two factors that significantly, interestingly affect the cycle time: First, it seems that in some areas, but not all, OD cooperation and problem resolution are quicker in cases that are handled locally with and by OD employees within the geographical jurisdiction of the Local Taxpayer Advocate (LTA). Second, "[t]he time needed for ODs to assist TAS on cases for which we [TAS] do not have delegated authority has a great impact on our cycle time. . . . The cycle time for these cases has increased . . . . If we eliminate these cases from our cycle time calculation, the cycle time would be 70.3 days. Until we implement service level agreements, TAS will continue to experience delays in processing OARs with the ODs." *Id.* at 58.

<sup>31</sup> See Treasury Inspector General for Tax Administration (TIGTA), "Taxpayer Advocate Service Employees Made Adjustments to Taxpayer Accounts Without Proper Authorization," Reference Number 2002-10-079 (March 2002).

<sup>32</sup> See notes 23 & 24 *supra*.

<sup>33</sup> This view from the field is not news to the NTA. In testimony before Congress last year, she frankly and honestly told the Members:

I am aware that some TAS employees will be dissatisfied with the redelegation order. These dedicated employees would like very much to resolve a taxpayer's case entirely within the Taxpayer Advocate shop. In some instances, this may be the appropriate result. I have made it clear to my employees that if, after we have tested these new authorities, we find that we need additional authorities, I will not hesitate to seek them. But I am keenly aware that if TAS takes on more IRS authorities, it risks becoming a "shadow IRS" and it loses its effectiveness as an advocate for systemic change. That is, after all, the ultimate goal — to work with the other IRS operating and functional divisions in identifying and mitigating individual and systemic taxpayer problems.

Statement of Nina E. Olson before the Subcommittee on Oversight of the House Committee on Ways and Means, April 3, 2001 (Hearing on the 2001 Tax Return Filing Season).

<sup>34</sup> E.g., The National Taxpayer Advocate's Report to Congress, Fiscal Year 2003 Objectives, Publication 4054 (Rev. 6-2002), see Introduction.

<sup>35</sup> This quote was taken from The National Taxpayer Advocate's Report to Congress Fiscal Year 2003 Objectives, Publication 4054 (Rev. 6-2002) at 3. A footnote to this passage observes: "Some commentators

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have questioned whether TAS employees are ombudsmen or advocates. These terms are not mutually exclusive. The American Bar Association's Standards for the Establishment and Operation of Ombuds Offices states that one of the functions of an ombuds' office is 'advocating on behalf of affected individuals or groups when specifically authorized by charter.'"

<sup>36</sup> National service agreements were expected more than a year ago. When the Board met in June 2002, consensus on a basic document had been reached with LMSB, SBSE, W&I, TEGE, and Appeals; but each division was working on an OD specific Addendum that identifies particular case processing issues, contact points, and liaison names. Agreement had also been reached on a Memorandum with the Office of Chief Counsel, which will substitute for a service level agreement. NTEU had been provided a copy of the basic OD service level agreement and TAS was waiting for a response. Everyone was reportedly working toward having everything reviewed, completed and signed by June 1, 2002, and the Board made clear its view that the deadline must be met.

<sup>37</sup> This visioning process for TAS is similar to the TAVS projects that preceded the standup of the other divisions. OTA was not included among these earlier projects. The process for OTA seems somewhat wider, including issues of independence and confidentiality that are peculiar to the OTA as well as issues of modernization, CPE, and other issues that are familiar to the other divisions.

<sup>38</sup> The Committee earlier promised to monitor the progress of cross-unit coordination agency-wide and intends to report later any findings, conclusions, and recommendations.

<sup>39</sup> See Oversight of Learning Throughout the Internal Revenue Service, Proposal to the Internal Revenue Service Oversight Board by the Committee on Personnel and Organization (January 14, 2002).

<sup>40</sup> See The National Taxpayer Advocate's Report to Congress, Fiscal Year 2003 Objectives, Publication 4054 (Rev. 6-2002) at 14. The key elements of these agreements are as follows:

- The Operating Divisions/Appeals will respond within one (1) day of receipt of an OAR on a TAS case involving economic and financial hardship criteria, providing TAS the name and phone number of the IRS employee assigned to work the case. The Operating Divisions/Appeals will respond within three (3) days of receipt of that OAR with a relief/no relief decision. (Note: the details of the exact nature of relief to be granted may take longer to work out.)
- The Operating Divisions/Appeals will respond within three (3) days of receipt of an OAR on a TAS case involving systemic or procedural hardship criteria, providing TAS the name and phone number of the IRS employee assigned to work the case. The TAS employee will then negotiate with the IRS employee assigned the case as to a reasonable timeframe within which to achieve resolution.
- The Operating Divisions/Appeals have designated a liaison in each office that receives Operations Assistance Requests from TAS. The Taxpayer Advocate Service has designated one person in each TAS office to serve as a liaison with the Operating Divisions and Appeals. These liaisons will track and facilitate the handling of OARs.
- The TAS Area Advocates will meet at least quarterly with the Operating Division/Appeals Liaisons to identify trends and problems in the processing of TAS cases. It is expected that these discussions will assist the IRS in addressing procedures or resource allocations that cause taxpayer problems, including delays.

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- The Operating Divisions/Appeals agree to provide TAS with opportunities to train their employees about the role of the Taxpayer Advocate Service, TAS significant hardship criteria, and the appropriateness of case referrals to TAS.
  - The Operating Divisions/Appeals agree to work with the TAS Executive Director of Systemic Advocacy to identify opportunities for systemic improvement.
  - The Taxpayer Advocate Service will convene a cross-functional team to monitor the implementation of the National Service Level Agreements during fiscal year 2003 and recommend revisions or process improvements.

<sup>41</sup> IRC § 7803(c)(4)(A)(iv).

<sup>42</sup> The National Taxpayer Advocate's Report to Congress, Fiscal Year 2003 Objectives, Publication 4054 (Rev. 6-2002) at 4.



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## IRS Commissioner's Comments on IRS Oversight Board National Taxpayer Advocate Report

September 5, 2002

### MEMORANDUM FOR STEVE NICKLES, IRS OVERSIGHT BOARD

**FROM:** Charles O. Rossotti  
Commissioner of Internal Revenue

**SUBJECT:** Comments on IRSOB report on NTA

I appreciate the substantial amount of work that the IRSOB has invested in studying the Taxpayer Advocate Service and in providing recommendations to us. This report also identifies the complexity of issues in setting up an effective taxpayer advocate activity within the IRS, a process that we have been working on since the passage of RRA in 1998. I have a few specific comments as follows:

1. Notwithstanding some of the work that still needs to be done with TAS and the OD's, I think it is important to note that the major objectives of the Congress and the IRS in establishing TAS are being achieved. In particular, the number of cases requiring intervention by TAS is declining, which is a sign of improved service and treatment of taxpayers by our normal operations. Feedback from taxpayers who use TAS is also very positive, and the number of serious cases going to congressional offices has declined to low levels. In fact, the increased success of TAS is, I believe, one significant reason for the major turnaround in the public's rating of the whole IRS.
2. The report notes that it often takes too long to resolve cases that were referred to the operating divisions from TAS. This is indeed a significant problem which we will address in the near term through the recently completed Memorandums of Understanding.

The report attributes these delays to problems of cross-unit coordination partly stemming from the reorganization. While coordination may have been a factor during the early period after startup of the new organization, I do not believe this is a significant cause of the delay sometimes required to resolve TAS cases. In fact, in almost all cases, one specific unit in one location has responsibility for each case. The cause of the delay in most cases is simply the large volume of ongoing work that exists everywhere in the IRS, together with the total dependence of the IRS on very old, inefficient, slow and error prone systems. It is worth noting that the TAS works in the range of 200,000 cases per year, while the OD's work over 40 million incoming phone calls and letters about account issues just in the accounts management functions and many millions more in compliance.

As the taxpayer advocate report itself has noted, the real solution to these problems is to improve the overall service level through modernization. This is happening, and over the long term it will improve service for all taxpayers, reduce the number of cases needing intervention by TAS and resolve those cases that do require TAS intervention much more quickly.

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## Oversight of the Office of the Taxpayer Advocate: Principal Findings and Actions

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3. The report notes the ongoing discussion within the agency concerning the “authorities” delegated to TAS to resolve cases directly. I think it is important to stress the fundamental reason why it is vital to the very functioning of the taxpayer advocate as an advocate to ensure that TAS does not become a second enforcement arm of the IRS. In RRA, Congress specifically insisted that TAS be separated from the IRS compliance functions because acting in this capacity was viewed as, and in fact was shown to be, incompatible with being an advocate. If TAS works cases that require enforcement actions, such as exam assessments or levies of assets, they would then become a parallel enforcement arm of the IRS rather than a taxpayer advocate. How could a taxpayer have confidence that TAS was acting as an advocate if the advocate was taking enforcement action against them? The situation would also arise where the taxpayer might appeal the action by TAS, and conceivably could have multiple appeals on the same case. Therefore, we have properly set up the authority of the TAS to resolve cases directly which do not involve a controversy that could require enforcement actions; for other compliance cases, TAS refers the cases to the OD’s for resolution. The TAS of course retains the authority to issue a Taxpayer Assistance Order if necessary to protect the taxpayers rights while the case is being resolved, and the taxpayer retains the rights under RRA to appeal any enforcement action to the IRS’s Appeals units and ultimately to the courts.

We will continue to use experience gained by the taxpayer advocate service in refining the authorities delegated to TAS in order to improve service to taxpayers where possible. However, we are firmly committed to implementing the concept of TAS, as we believe Congress intended in RRA, as an arm of the IRS to assist and advocate for taxpayers without falling into the trap of becoming a parallel enforcement arm.

4. Concerning the advocacy function of TAS, it is important to note that this “advocacy role” does not relieve the operating units of any responsibility for developing proposals and plans to improve service to taxpayers. Instead, it provides a useful and distinct input into the planning process. As the IRS now works, all improvement projects are proposed, approved and funded through the agency-wide strategic planning process. TAS’s advocacy proposals are a key input to determining the priority of the numerous opportunities for improvement projects. In addition, TAS has a unique role of reporting independently to Congress on proposals to improve service to taxpayers and may include legislative proposals; no one else in the IRS, including the Commissioner, has the authority to fulfill this role.



